54. We note that our decision here not to impose our filing requirements on non-incumbent local exchange carriers does not require a separate rulemaking proceeding. Generally, before promulgating a rule, an agency is required to publish general notice of its proposal in the Federal Register unless those subject to the rule are actually named and either personally served or have actual notice.[123] Section 553(b)(A) of the Administrative Procedures Act (APA), however, makes an exception to the general notice requirement for "interpretative rules."[124] We find that our determination here that non-incumbent local exchange carriers are not subject to our CAM and ARMIS filing requirements is merely interpretative in nature.[125] Our clarification that our filing requirements do not apply to non-incumbent local exchange carriers does not represent a change in an existing rule nor the adoption of a new rule, but merely explains our position on a subject about which our rules were previously silent.[126] As such, a separate rulemaking proceeding is not necessary.

F. Other Matters

55. In the *Order and Notice*, we stayed our Part 43 reporting requirements to the extent that they are currently imposed upon carriers that first crossed the revenue threshold in 1996.[127] In addition, we stayed our rule requiring each carrier to file a CAM within 90 days of first reaching the operating revenue threshold to the extent that the rule would first apply to

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GN Docket No. 96-113, 11 FCC Rcd 6280 (1996).

[123] 5 U.S.C. § 553(b).

[124] Id. § 553(b)(A).

[125] Admittedly, there is "no bright line that separates" interpretive and substantive rules. Friedrich v. Secretary of Health, 894 F.2d 829, 834 (6th Cir.), cert. denied, 498 U.S. 817 (1990). The courts have ruled that "an interpretative rule simply states what the administrative agency thinks the statute means, and only 'reminds' affected parties of existing duties." First National Bank of Lexington v. Sanders, 946 F.2d 1185, 1188 (6th Cir. 1991), citing Friedrich v. Secretary of Health, 894 F.2d at 834.

[126] See Metropolitan School Dist. of Wayne Township v. Davila, 969 F.2d 485, 489-92 (7th Cir. 1992) (holding that an expression of agency opinion on a subject never before considered may be interpretive when the agency's ruling does not constitute a change in policy); Southern California Edison Co. v. Federal Energy Regulatory Comm'n, 770 F.2d 779, 783 (9th Cir. 1985) (holding that "[i]nterpretative rules merely clarify or explain existing law or regulations" and go "to what the administrative officer thinks the statute or regulation means") (citations omitted).

[127] Order and Notice, 11 FCC Rcd para. 15. Furthermore, in an earlier Memorandum Opinion and Order, the Bureau temporarily stayed the dates for filing of future ARMIS reports for those companies that had not begun to file ARMIS reports by June 30, 1995. Because this Order clarifies the criteria for filing ARMIS reports, this stay is lifted. Memorandum and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995).

a carrier because of its 1996 operating revenues.[128] Because this *Order* establishes permanent rules for adjusting the revenue thresholds for inflation, these stays are lifted. In accordance with the rules established in this *Order*, once the revenue threshold for 1996 is published in the Federal Register,[129] carriers with operating revenues exceeding the threshold for the first time must begin compliance with our filing and reporting requirements as indicated herein.[130]

IV. ATU'S PETITION AND PROPOSALS TO INCREASE THE REPORT FILING THRESHOLD

Background

56. On June 22, 1995, ATU filed a "Petition for a Declaratory Ruling, or in the Alternative, for Waiver or Rule Making," requesting a determination that incumbent local exchange carriers with more than $100 million in annual operating revenues, but less than $100 million in annual revenues from regulated telecommunications operations, were not subject to our ARMIS filing requirements.[131] In support of its petition, ATU cited discrepancies between statements in previous Commission orders to the effect that only Tier 1 local exchange carriers were required to file such reports and Sections 43.22 and 43.21(f) of our rules requiring filing by local exchange carriers with annual operating revenues of $100 million or more.[132]

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[128] Id.

[129] We expect that the revenue threshold for 1996 will be published in or about April 1997.

[130] In another proceeding, the Bureau stayed the filing of ARMIS reports for those companies that have not yet begun filing such reports, "pending issuance of an order clarifying the criteria for filing ARMIS reports." Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995). Because these criteria have been clarified in this *Order*, this stay is lifted as well.

[131] Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995).

[132] See, e.g., id. at 5-8 (discussing Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6833-34 paras. 381-383 (1990), modified on recon., Order on Reconsideration, 6 FCC Rcd 2637 (1991), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993); Elimination of FCC Form 901, Monthly Form Required from Telephone Companies, CC Docket No. 87-503, Report and Order, 3 FCC Rcd 6261 para. 1 & n.2 (1988); ARMIS Order, supra note 13 paras. 24-25; Waiver of FCC Form 901, Monthly Form Required from Telephone Companies, Memorandum Opinion and Order, 3 FCC Rcd 567 (Com. Car. Bur. 1988)). For tariff review purposes, the term "Tier 1 local exchange carrier" has traditionally referred to a company having annual revenues from regulated operations of $100 million or more. For accounting purposes, the Commission uses the terms "Class A" and "Class B" companies as defined in section 32.11(a)(1) and (2) of the Commission's rules to differentiate between large and small carriers. 47 C.F.R. §§ 32.11(a)(1), (2).

57. At the same time, ATU also filed a "Petition for an Extension of Time" requesting an extension for the filing of its initial ARMIS 43-01 report "until at least 90 days after the Commission resolves [its] Petition for Declaratory Ruling, or in the [A]lternative for Waiver or Rule Making, filed [June 22, 1995]."[133] On June 30, 1995, in response to ATU's filings and to requests from other incumbent local exchange carriers for clarification concerning the timing or applicability of our ARMIS report filing rules, the Bureau stayed the dates for the filing of future ARMIS reports for those carriers that had not yet begun filing such reports.[134]

58. In the *Order and Notice*, we explained that continuing to require ARMIS reports from those incumbent local exchange carriers for which annual operating revenues, both regulated and nonregulated, exceed a defined, inflation-adjusted threshold is necessary to provide us with the financial and operating data we need to administer our accounting, cost allocation, jurisdictional separations, and access charge rules, and to preserve our ability to monitor industry developments and quantify the effects of alternative regulatory proposals.[135] Otherwise, detection of improper subsidization of nonregulated services in violation of our cost allocation rules, a Commission responsibility explicitly imposed by the 1996 Act, would be impaired by a reporting requirement threshold based solely on regulated revenues.[136]

59. Although we believed that our rules in this area were clearly stated, we decided "to reevaluate whether these reporting requirements should apply only to those incumbent local exchange carriers for which annual revenues from regulated telecommunications operations exceed a defined, inflation-adjusted threshold."[137] We tentatively concluded that we should continue to require only those companies with annual operating revenues equal to or exceeding a defined, inflation-adjusted threshold to file ARMIS reports. Accordingly, we granted ATU's petition for rulemaking to consider these issues, and dismissed ATU's petition to the extent that it makes alternative requests for declaratory ruling or waiver.

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[133] Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995) (regarding Extension of Time for FCC ARMIS Form 43-01).

[134] DA 95-1488, Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995).

[135] ARMIS reports have been a valuable source of cost information to the Commission in its evaluation of tariffs filed under rate-of-return regulation. Cost information from these reports has also played an important role in tariff investigations, certain rulemakings concerning cost issues, and in the evaluation of exogenous cost adjustments under the price cap rules (for example, in determining the cost effects of property transfers).

[136] For a discussion of the accounting safeguards required by the 1996 Act, see Accounting Safeguards Notice, supra note 87.

[137] Notice para. 31.

60. On October 15, 1996, ATU filed a Petition for Reconsideration of the Commission's decision denying ATU's petition for declaratory ruling or waiver. Specifically, ATU argues that a "rational connection" between the Commission's analysis and the rules adopted is lacking.[138] ATU claims that the Commission's rules state that local exchange carriers with annual operating revenues of $100 million must file certain ARMIS reports, but the order adopting these rules does not provide any explanation for the $100 million threshold.[139] Accordingly, it asserts, applying ARMIS reporting requirements to ATU--a non-Tier 1, non-Class A local exchange carrier--is "arbitrary and capricious and contrary to the public interest."[140]

61. Tier 1 local exchange carriers have been defined as "those companies having more than $100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B telephone companies for the year 1983."[141] The classification of carriers into "Tier 1" and "Tier 2" began in 1985 for the tariff review process. In the 1990 Tariff Review Plan, however, the definition of "Tier 1" was modified to equate "Tier 1" companies with "Class A" companies and "Tier 2" companies with "Class B" companies, as defined by section 32.11(a) and 32.11(e) of our rules.[142] In the *Order and Notice*, we concluded that, by limiting ARMIS reporting requirements to Tier 1 local exchange carriers, we would impair our ability to collect financial and operating data reflecting the present structure of the telecommunications industry, including the widespread growth of nonregulated activities since 1983.[143] At paragraph 33, we tentatively concluded that we should continue to require ARMIS report filings by those carriers with annual operating revenues equal to or above a defined, inflation-adjusted threshold. We invited comment on these tentative conclusions and, specifically, requested comment on alternative rule proposals.

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[138] ATU Petition for Reconsideration at 2.

[139] Id. at 2-3.

[140] Id. at 3. See also ALLTEL Reply at 2.

[141] Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 para. 3 (Com. Car. Bur. 1990). See also Commission Requirements for Cost Support Material to Be Filed with 1989 Annual Access Tariffs, Order, 4 FCC Rcd 1662, 1663 para. 10 (Com. Car. Bur. 1988); ARMIS Order, supra note 13, at 5844 n.4.

[142] Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 para. 4 (Com. Car. Bur. 1990).

[143] Order and Notice para. 33.

Comments

62. ATU argues that it should not be required to comply with our CAM and ARMIS reporting requirements because it "stands on the cusp" of the filing revenue threshold, as its operating revenues were $107,309,169 for 1994 and approximately $107,900,000 for 1995.[144] Moreover, due to "impending competition in local exchange services and continued competition in deregulated services," ATU predicts that there is a reasonable likelihood that its revenues for 1996 or 1997 may fall below the required reporting, filing, and auditing threshold.[145] For this reason, ATU fears that it will be required to incur the expense of learning how to prepare ARMIS reports and support a CAM audit for 1994 and 1995, only to find that any experience and expertise with these matters will not be necessary or useful in the future.[146] ATU contends that, because it accounts for only one tenth of 1% of access lines nationwide, there is little if any benefit from forcing ATU to comply with the ARMIS and CAM filing and auditing requirements.[147]

63. Because of these concerns, ATU proposes that the ARMIS reports and CAM filings and audits only be required for local exchange carriers with more than 2% of access lines nationwide.[148] ATU argues that if the Commission adopts a reporting threshold based on access lines, all smaller local exchange carriers will be exempt from regulatory burdens that will inhibit their ability to compete.[149] The premise of ATU's argument is that there cannot be a critical need for ARMIS and CAM information from carriers on the cusp of the Commission's reporting threshold. It adds that as competition increases, total operating revenues of incumbent local exchange carriers will likely decline. Thus, ATU argues, those carriers "on the cusp" of the reporting threshold may be required to prepare ARMIS and CAM

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[144] ATU Comments at 11. In section III.C., supra, we determine that the inflation-adjusted revenue threshold was $104 million for 1994 and $107 million for 1995.

[145] ATU Comments at 13.

[146] Id. at 13. ATU estimates that these requirements would add approximately $500,000 annually in new expenses starting as early as next year. See id. at 11.

[147] Id. at 13.

[148] Id. at 14. ATU bases its proposed 2% figure on the language of section 251(f) of the Act, which requires that incumbent local exchange carriers with less than two percent of access lines may petition for suspension or modification of the expanded interconnection, unbundling and other statutory requirements on incumbents. Id. See also Cincinnati Bell Comments at 6; ALLTEL Reply at 3-4; Citizens Reply at 2.

[149] ATU Reply at 1. See also Cincinnati Bell Comments at 6-7.

filings some years and not others. ATU asserts that such fluctuating reporting requirements will undermine the Commission's claim that information from these carriers is necessary.[150]

64. Similarly, USTA argues that the Commission should "forbear from applying its CAM rules and ARMIS reporting requirements for those companies with less than [2%] of the [n]ation's subscriber lines installed in the aggregate nationwide."[151] According to USTA, such an increased threshold would recognize that the nine largest local exchange carriers together provide approximately 90% of the access lines provided by local exchange carriers throughout the United States.[152] Moreover, "[g]iven the increase in competition, there is even less reason to require the CAM today for any [local exchange carrier]."[153] According to USTA, modifying the threshold to 2% of the access lines will promote competition by reducing any disparity in regulatory treatment among local exchange carriers and their competitors.[154]

65. GCI maintains that our CAM and ARMIS filing requirements must apply to ATU and other similarly-situated carriers.[155] GCI asserts that these CAM and ARMIS requirements are imposed on carriers such as ATU to ensure that they do not use their monopoly local exchange business to cross-subsidize and support their competitive businesses. GCI adds that because "local exchange carriers such as ATU can enter the long distance business at any time, it is important that they meet the filing requirements for CAM and ARMIS" outlined in the *Order and Notice*.[156] GCI further states that ATU's proposal for the Commission to impose its reporting requirements only on carriers with more than 2% of the access lines is inconsistent with the intent of the 1996 Act because it specifically states that the requirement for filing should be based on an inflation factor over the $100 million threshold.[157]

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[150] Id. at 4.

[151] USTA Comments at 4.

[152] Id.

[153] Id. at 5.

[154] Id. at 5.

[155] GCI Reply at 4.

[156] Id.

[157] Id. at 4-5.

66. Several commenters argue that the reporting threshold should remain based on revenue, but be raised.[158] USTA contends that the Commission could raise the threshold to $250 million as an alternative to 2% of the access lines.[159] Southwestern Bell agrees, adding that the revenue threshold should be based only on the carrier's regulated revenues, which would minimize the burden of the Commission's filing requirements on those entities that have made only relatively small entries into the local exchange market.[160]

67. AT&T argues that the Commission should not adopt USTA's proposals for revising the filing thresholds for CAM and ARMIS reports.[161]

Discussion

68. In the *Order and Notice*, we tentatively concluded that our reporting requirements should continue to be based on total, and not solely regulated, operating revenues.[162] The purpose of our cost allocation rules is to ensure that costs associated with nonregulated operations are not shifted to ratepayers purchasing regulated services. Our cost allocation rules apply to carriers' total costs; therefore, it is appropriate that total costs be used to calculate the reporting requirement threshold. Accordingly, we will continue to require carriers to comply with our filing requirements once their total operating revenues surpass the applicable threshold level.

69. We do not agree that we should look to the language of section 251(f) of the Act when establishing a CAM and ARMIS filing threshold. Section 251(f) concerns the process for local exchange carriers to petition for suspension or modification of certain obligations, including restrictions on resale of its telecommunications services, the duty to provide dialing parity to competitors, and the duty to provide interconnection at just, reasonable and nondiscriminatory rates. This section has no application to the CAM and ARMIS filing threshold and therefore does not affect our decisions on this matter.[163] Moreover, we are unpersuaded that we should modify our threshold level by adopting a

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[158] USTA Comments at 5 n. 6; Southwestern Bell Reply at 7. But see ALLTEL Reply at 1-3 for a discussion of perceived fundamental defects in the revenue standard.

[159] USTA Comments at 5 n. 6.

[160] Southwestern Bell Reply at 7.

[161] AT&T Reply at 5-6.

[162] Order and Notice para. 32.

[163] See GCI Reply at 5.

standard that reflects a percentage of the nation's access lines. Under such an approach, it would be necessary to determine the total number of access lines in use on an annual and expedited basis. Otherwise, carriers "on the cusp" of the access line filing threshold could not determine whether they are subject to our reporting requirements for a particular year. Moreover, in the past we have discovered discrepancies among carriers in interpreting the definition of "access line." Clearly, the simpler approach is to retain a standard based on operating revenue.[164]

70. We require some carriers to file CAMs and ARMIS reports to satisfy our interests in protecting ratepayers from improper cost allocations, and to ensure a base level of service quality. We established a filing threshold of $100 million because we found that for carriers with annual revenues at this level, the benefits of requiring compliance outweighed the burdens that compliance imposed upon them. We find again that, for carriers with annual revenues in excess of this threshold (adjusted for inflation), the benefits to ratepayers outweigh the costs to those carriers of requiring compliance with these reporting rules. Therefore, we retain our filing threshold of $100 million, as adjusted annually for inflation.

71. Given the conclusions we reach in this rulemaking proceeding, we find it appropriate to reexamine ATU's petition for waiver of its obligation to comply with ARMIS reporting requirements and to file with the Commission a CAM for the separation of costs of its regulated and nonregulated activities. A petition for waiver of the Commission's rules may be granted for good cause shown.[165] The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.[166] The U.S. Court of Appeals for the D.C. Circuit has stated that waivers permit a more rigorous adherence to an effective regulation by allowing the agency to take into account considerations of hardship, equity, or more effective implementation of overall policy on an individualized basis, while also emphasizing that "[a]n applicant for waiver faces a high hurdle even at the starting gate."[167] In *WAIT Radio*, the court explained that "[t]he very essence of a waiver is the assumed validity of the general rule . . . ."[168] Given the validity of the rule, the test identified in *WAIT Radio* requires the party seeking the waiver to demonstrate that the rule is unjust as applied to the party given the unique circumstances of

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[164] In addition, there is insufficient notice in this proceeding to adopt a threshold based on access line use.

[165] See section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

[166] Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[167] WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

[168] WAIT Radio v. FCC, 418 F.2d at 1158.

the situation.[169] A waiver is thus appropriate only if special circumstances warrant a deviation from the general rule and such deviation will better serve the public interest than strict adherence to the general rule.[170] Therefore, the relevant test is whether petitioner has shown such special circumstances as individualized hardship or inequity that warrant deviation from our rule that incumbent local exchange carriers must comply with our reporting and filing requirements once their annual revenues surpass the adjusted threshold.

72. We find that ATU's concern that it may be subject to our CAM and ARMIS reporting and filing requirements for only one year has some merit. The threshold was initially established at a level intended to determine clearly which carriers are subject to our reporting requirements. Currently, however, ATU's annual revenues barely exceed our filing and reporting threshold. Moreover, ATU has shown that there is a likelihood that its revenues will soon decrease once again to a level below the reporting and filing threshold. Under these unique circumstances, we find that there is good cause shown to waive ATU's compliance with our reporting requirements. The public interest will not be served by requiring ATU to incur substantial initial costs associated with training personnel and developing procedures designed to comply with our rules, when there is a likelihood that ATU will fall back below the reporting threshold within one or two years. We find that ATU has met its burden of showing special circumstances that warrant an exemption from our reporting and filing threshold by demonstrating that it would suffer individualized hardship should it be required to comply fully with our reporting and filing requirements for calendar years 1996 and 1997.

73. Neither the public interest generally nor the Commission's ARMIS reporting requirements will be undermined by a limited waiver granted to this one entity. This is especially true where that one entity, ATU, is the only one of which we are presently aware that is so close to the filing threshold, and the only one that has made a showing that it is likely to fall below the reporting requirement threshold in the coming year or two. We will limit the waiver grant to two years and will re-evaluate whether the waiver should continue based upon review of ATU's 1997 annual revenues. If, however, ATU's 1997 revenues exceed the revenue threshold, as adjusted for inflation, then it must comply with the reporting requirements beginning in 1998. Finally, we believe the waiver demonstrates flexibility in our regulatory approaches that advances the general deregulatory and pro-competitive goals of the 1996 Act. Consequently, we grant ATU a limited two-year waiver of our ARMIS reporting and filing requirements.

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[169] See Northeast Cellular Tel. Co. v. FCC, 897 F.2d at 1166, citing WAIT Radio v. FCC, 418 F.2d 1153. See also Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C. Cir. 1970).

[170] See Northeast Cellular Tel. Co. v. FCC, 897 F.2d at 1166.

74. We note, however, that the initial CAM filed by ATU has revealed that the methodology it uses to allocate costs and record affiliate transactions is flawed.[171] Although only those carriers with annual revenues exceeding the threshold must file a CAM, the *Joint Cost Order* requires that all incumbent local exchange carriers, regardless of annual revenue, must comply with our cost allocation and affiliate transaction rules.[172] We require incumbent local exchange carriers to file a CAM to verify that they are in compliance with these rules. We cannot ignore ATU's failure to observe our rules and therefore decline to waive our CAM filing requirement. Accordingly, we will require that ATU file a CAM reflecting accounting procedures that are in compliance with our cost allocation and affiliate transaction rules. We find that the CAM filing process is much less burdensome than the ARMIS reporting requirements. Moreover, we believe that ATU can correct the flaws in its initial CAM without great expense or difficulty. Therefore, ATU must file a revised CAM incorporating the adjustments as discussed with Commission staff by April 30, 1997.[173] Six months after receiving final approval of its CAM, ATU must submit a report by an independent auditor attesting that ATU's cost system in place in the company reflects the company's CAM requirements.

V. FINAL REGULATORY FLEXIBILITY CERTIFICATION

75. In the *Order and Notice,* the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities.[174] No comments were received concerning the proposed certification. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial

[171] Specifically, ATU's treatment of certain nonregulated activities is not clearly stated. From the CAM, we are unable to determine whether certain nonregulated services are provided through ATU itself or through a separate affiliate. Moreover, several Part 32 accounts were inexplicably omitted from the CAM's cost apportionment tables.

[172] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, CC Docket No. 86-111, 2 FCC Rcd 1298, 1304 para. 47 (1987) (Joint Cost Order), recon., 2 FCC Rcd 6283 (1987) (Reconsideration Order), further recon., 3 FCC Rcd 6701 (1988) (Further Reconsideration Order), aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F. 2d 1378 (D.C. Cir. 1990).

[173] Over the past several weeks, ATU has worked closely with Common Carrier Bureau staff towards correcting these problems.

[174] Order and Notice para. 47.

number of small entities.[175] This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[176]

76. The *Order and Notice* certified that no regulatory flexibility analysis was required because the entities affected by the proposed rules were either large corporations, affiliates of such corporations, or were dominant in their field of operations and therefore not small entities.[177] Section 32.2000(a)(4), however, applies to all carriers providing interstate services, some of which may be small entities.[178] Although we consider small incumbent local exchange carriers to be dominant in their field of operations, we will include such companies in our regulatory flexibility analysis.[179] Consequently, we cannot certify that no regulatory flexibility analysis is required for the reasons offered in the *Order and Notice*.

77. Nonetheless, we believe that we may still certify that no regulatory flexibility analysis is necessary here because we do not believe the rules adopted in this *Order* will have a significant economic impact on the carriers that must comply with our filing and reporting requirements. This *Order* adjusts our filing and reporting threshold for inflation and allows carriers to file ARMIS reports on an annual basis. As such, it prevents additional carriers from becoming subject to these filing and reporting requirements solely due to the cumulative effect of inflationary pressure. It also reduces the regulatory burden on those carriers that must comply with our ARMIS filing requirements by allowing these reports to be filed only once per year. Accordingly, we do not believe the rules adopted or modified herein will have a significant economic impact on a significant number of small entities.

78. We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this Order do not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the Federal Register, and shall provide a copy

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[175] 5 U.S.C. § 605(b).

[176] Id. §§ 601-611. SBREFA was enacted as Subtitle II of the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[177] Order and Notice para. 42-4.

[178] The SBA defines small telecommunications entities as those having fewer than 1,500 employees. 15 C.F.R. § 121.201 SIC Code 4813 (Telephone Communications, Except Radiotelephone).

[179] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, paras. 1328-30, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996).

of this certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include the certification in the report to Congress pursuant to the SBREFA.[180]

VI. PAPERWORK REDUCTION ACT

79. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and has been approved in accordance with the provisions of that Act. We have amended the existing rules only where we are certain that the existing rules will not fulfill the overall goals of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Second, in accordance with the overall policy underlying the 1996 Act, we will revisit these issues in the future to determine if our regulations are still necessary once competition increases.

VII. ORDERING CLAUSES

80. Accordingly, IT IS ORDERED that, pursuant to Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Pub. L. No. 104-104, and Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201-205, 215, 218 and 220, and Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), Parts 32, 43, and 64 of the Commission's rules, 47 C.F.R. Parts 32, 43, and 64 ARE AMENDED, as described in Part III, above.

81. IT IS FURTHER ORDERED that, pursuant to Sections 402(b)(2)(B) of the Telecommunications Act of 1996, Pub. L. No. 104-104, and Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201-205, 215, 218 and 220, the Petition for Reconsideration by Anchorage Telephone Utility IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[180] Id. § 801(a)(1)(A).

APPENDIX A

List of Commenters in CC Docket No. 96-193

Ameritech Operating Companies (Ameritech)
Anchorage Telephone Utility (ATU)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth)
Cincinnati Bell Telephone Company (Cincinnati Bell)
GTE Service Corporation and its affiliated domestic telephone operating, long distance and wireless companies (GTE)
MCI Telecommunications Corporation (MCI)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (Pacific)
Puerto Rico Telephone Company (Puerto Rico Telephone)
Southwestern Bell Telephone Company (Southwestern Bell)
Sprint Corporation (Sprint)
Teleport Communications Group Inc. (Teleport)
U S West, Inc. (US West)
United States Telephone Association (USTA)

List of Reply Commenters in CC Docket No. 96-193

ALLTEL Telephone Services Corporation (ALLTEL)
ATU
AT&T Corp. (AT&T)
Bell Atlantic
BellSouth
Citizens Utilities Companies (Citizens)
Cox Communications, Inc. (Cox)
General Communication, Inc. (GCI)
Southwestern Bell
Teleport
USTA

Petitions for Reconsideration in CC Docket No. 96-193

ATU

APPENDIX B

Final Rules

Parts 32, 43 and 64 of Title 47 of the Code of Federal Regulations (C.F.R.) are amended to read as follows:

PART 32 -- UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 is revised to read as follows:

AUTHORITY: Secs. 4(i), 4(j), and 220, as amended; 47 U.S.C. 154(i), 154(j) and 220; Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 402(c), 110 Stat. 56 (1996) unless otherwise noted.

2. Section 32.11 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 32.11. Classification of companies.

(a) * * *

(1) Class A. Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) Class B. Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

3. Section 32.9000 is amended by adding the definition of "indexed revenue threshold for a given year" in alphabetical order to read as follows:

§ 32.9000. Glossary of terms.

Indexed revenue threshold for a given year means $100 million, adjusted for inflation, as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index ("GDP-CPI"), for the period from October 19, 1992 to the given year. The indexed revenue threshold for a given year shall be determined by multiplying $100 million by the ratio of the annual value of the GDP-CPI for the given year to the estimated seasonally adjusted GDP-CPI on October 19, 1992. The indexed revenue threshold shall be rounded to the nearest $1 million. The seasonally adjusted GDP-CPI on October 19, 1992 is determined to be 100.69.

PART 43 -- REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. No. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.01 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 43.01. Applicability.

(a) * * *

(b) Except as provided in paragraph (c) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of the part.

(c) Carriers becoming subject to the provisions of §§ 43.21 and 43.43 for the first time, because their annual operating revenues equal or exceed the indexed revenue threshold for a given year, shall begin collecting data pursuant to such provisions in the calendar year following the publication of that indexed revenue threshold in the Federal Register. With respect to such initial filing of reports by any carrier, pursuant to the provisions of § 43.21(d), (e), (f), (g), (h), (i), (j), and (k), the carrier is to begin filing data for the calendar year following the publication of that indexed revenue threshold in the Federal Register by April 1 of the second calendar year following publication of that indexed revenue threshold in the Federal Register.

3. Section 43.21 is amended by revising the first two sentences of paragraph (a), removing paragraph (b), revising paragraph (c), revising paragraph (d), revising the introductory text of

paragraph (f), revising paragraph (g), redesignating paragraphs (c) through (g) as paragraphs (b) through (f), and adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 43.21. Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of the indexed revenue threshold, as defined in § 32.9000, and certain companies (as indicated in paragraph (b) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraph (b) of this section, each annual report required by this section shall be filed no later than April 1 of each year, covering the preceding calendar year. * * *

(b) Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues equal to or above the indexed revenue threshold, as defined in § 32.9000, shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission.

(c) Each miscellaneous common carrier (as defined by § 21.2 of this chapter) with operating revenues for a calendar year in excess of the indexed revenue threshold, as defined in § 32.9000, shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. This letter must be filed no later than April 1 of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the Federal Register, but in no event shall such carriers be required to file the letter prior to April 1.

(d) * * * [Formerly 43.21(e)]

(e) Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold shall file, no later than April 1 of each year, reports showing:

(1) * * *

(2) * * *

(3) * * *

(f) Each local exchange carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other

investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

(g) Each local exchange carrier for whom price cap regulation is mandatory and every local exchange carrier that elects to be covered by the price cap rules shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to network measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(h) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to customer measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(i) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report containing data from the previous calendar year on a study area basis that are designed to capture trends in telephone industry infrastructure development under price cap regulation.

(j) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report containing data from the previous calendar year on an operating company basis. Such report shall contain statistical data designed to monitor network growth, usage, and reliability.

(k) Each designated interstate carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access, and nonaccess.

4. Section 43.22 is removed.

5. Paragraph (a) of section 43.43 is revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

(a) Each communication common carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000, and that has been found by this Commission to be a dominant carrier with respect to any communications service shall, before making any change in the depreciation rates applicable to its operated plant, file with the Commission a report furnishing the data described in the subsequent paragraphs of this section, and also comply with the other requirements thereof.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. No. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

2. Section 64.903 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 64.903. Cost allocation manuals.

(a) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000 of this chapter, shall file with the Commission within 90 days after the publication of that threshold in the Federal Register, a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities: * * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes

to the cost apportionment table and to the description of time reporting procedures must be filed at least 15 days before the carrier plans to implement the changes. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

(c) * * *

3. Paragraph (a) of section 64.904 is revised to read as follows:

§ 64.904. Independent audits.

(a) Each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall have an audit performed by an independent auditor on an annual basis, with the initial audit performed in the calendar year after the carrier is first required to file a cost allocation manual. The audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

(b) * * *